

e-CTIM No.39/2009

26 August 2009

TO ALL MEMBERS

TECHNICAL

Direct Taxation

1. MINUTES OF FILING PROGRAMME WORKING GROUP MEETING (DESIRE 3/2009)

The Inland Revenue Board (IRB) has recently released the minutes of the Filing Programme Working Group Meeting (DESIRE) No. 3/2009 held on 24 July 2009.

The issues discussed include, inter-alia, the following:

- Members are requested to forward their issues, problems and feedback on the e-filing system to the IRB at helpitef@hasil.gov.my and copy to both the secretariats of the IRB and the Institute at wsaodah@hasil.gov.my and kslim@ctim.org.my respectively. (item no. 3.2.)
- A company must furnish to the Director General of IRB (DGIR) the Form R within 7 months following the close of its accounting period, even though it has opted to move into single tier system by submitting Form R50 to IRB to forgo its Section 108 credit balance. (item no.3.11.)
- The IRB has clarified that in cases where a taxpayer has under-declared some income, or has claimed expenses which are not deductible or has claimed incentives which he is not eligible or any other circumstances which result in an assessment of additional assessment, the taxpayer may amend his tax return under Section 77B of the Income Tax Act (the Act). The self-amendment is allowed once and must be made within 6 months from the due date of submission of the tax return. This differs from the application for relief under Section 131 of the Act in respect of an error or a mistake made in the tax return submitted. (item no. 3.12.)
- The IRB informed that there are cases where the date of declaration by the taxpayer indicated on the tax return is later than the date of submission of the tax return. This causes the computer system to reject the return form during processing. Members are reminded that the date of declaration on the tax return must be the same or earlier than the date of submission. (item no. 4.9.)

Members can view the minutes at the Institute's website at [http://www.ctim.org.my/PDF/Technical/Minutes%20of%20Filing%20Programme%20Working%20Group%20Meeting%20\(DESIRE%2003-2009\).pdf](http://www.ctim.org.my/PDF/Technical/Minutes%20of%20Filing%20Programme%20Working%20Group%20Meeting%20(DESIRE%2003-2009).pdf) .

2. Public Ruling on Professional Indemnity Insurance (PR. No.3-2009)

The IRB has issued the new Public Ruling on Professional Indemnity Insurance on 30 July 2009 and uploaded to its website on 19 August 2009. While the Public Ruling has taken into account the 2008 Budget proposals, it only benefits professionals whose professional status is recognised by a written law or statute in Malaysia. This is not in line with the spirit of the Budget proposals.

- i) The Public Ruling defines “profession” as any profession where its professional status is recognised by a written law or statute in Malaysia. “Professional” means a person who belongs to a profession and is a member of a professional body which represents the profession or registered with a body which governs the profession.

The definition of “professional” should be widened to include all services to be in line with the national economic objectives of promoting the services industry. The Public Ruling has restricted the impact of professional indemnity insurance (PII) on the services industry.

- ii) The rationale of the Public Ruling is that PII is a policy taken to protect the personal assets of the insured against personal liability or risk and thus is not a deductible expense since it is not wholly and exclusively incurred in the production of income.

PII is similar to product liability insurance which is intended to protect the business, be it a corporation or an individual, from claims by customers on the products sold in the course of carrying on the business. The only difference is that in the case of product liability insurance, the product involved is a physical good whereas in the case of professional indemnity insurance, the product involved is services. PII is not a policy to protect the personal assets of the insured as otherwise the insurance premium would be determined based on the value of the individual’s personal assets.

- iii) Following from the above, any compensation expense in connection with the PII paid by the professional to the claimant is not allowed as a deduction. However, where a professional has been allowed a deduction for a PII premium paid, the Public Ruling indicates that any proceeds received in connection with the PII will be subject to tax. It is unclear whether the proceeds received are still taxable where the PII premium has been disallowed.

The proceeds received in connection with the PII should be taxable but the compensation expense paid by the professional to the claimant should be deductible. Paragraph 5.1 of the Public Ruling indicates that a “professional due to the nature of his work, may be exposed to the likelihood of law suits for professional negligence for what he had done or what he had said in the course of his work.” Consequently, those claims arising from law suits should be deductible under Section 33(1) of the Act. Further, if the proceeds are taxable, the claims paid by the professional should be deductible. Any compensation made to a customer is a revenue expense as the possibility of negligence action/suits being taken against him is always there.

The Institute will follow up with the IRB and the Ministry of Finance on the above issues.

Meanwhile, members may view the Public Ruling at the website of the Institute at

[http://www.ctim.org.my/PDF/Technical/Professional%20Indemnity%20Insurance%20-%20PR%2003-09%20\(300709\).pdf](http://www.ctim.org.my/PDF/Technical/Professional%20Indemnity%20Insurance%20-%20PR%2003-09%20(300709).pdf) or at the website of the IRB at

http://www.hasil.gov.my/lhdnv3e/documents/KetetapanUmum/2009/PR_03_09.pdf

PUBLICATION

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